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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. EMANUEL LOPEZ IBARRA, Defendant and Appellant.	E068742 (Super.Ct.No. FVA1400294) OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M. McCann, Judge. Affirmed.

Johanna R. Pirko, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Joseph C. Anagnos, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Emanuel Lopez Ibarra is a lawful resident of the United States. In 2014, he pleaded guilty to possession for sale of a controlled substance, to wit, methamphetamine (Health & Saf. Code, § 11378). In exchange, the remaining charge and enhancement allegations were stricken and defendant was sentenced to two years in county jail with credit for time served. Following his release from county jail, defendant was apprehended by the federal government and placed in removal proceedings in federal immigration court. Approximately three years later, in 2017, defendant filed a motion to vacate his 2014 plea pursuant to Penal Code[1] section 1016.5, arguing his conviction was legally invalid because the trial court failed to advise him about the immigration consequences of his guilty plea and he was prejudiced as a result. The trial court denied defendant's motion to vacate, and defendant appealed.

On appeal, defendant argues (1) the trial court abused its discretion in denying his section 1016.5 motion to vacate his conviction because his limited English prevented him from understanding the immigration consequences of his plea; (2) the trial court abused its discretion by applying the wrong test for prejudice on a section 1016.5 motion; and (3) his trial counsel rendered ineffective assistance of counsel when counsel failed to provide an interpreter during a critical phase of the guilty plea negotiations. We reject defendant's contentions and affirm the judgment.

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[1] All future statutory references are to the Penal Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND[2]

On February 18, 2014, police officers were engaged in surveillance of a confidential informant who had arranged to purchase 25 pounds of methamphetamine from unidentified men in a parking lot. The informant was wearing a wire, and officers were monitoring its transmissions.

From inside the confidential informant's car, the informant urged two of the men, Jesus Castaneda and Carlos Valenzuela, to bring more than the three pounds of methamphetamine that the informant had already purchased. Castaneda exited the informant's car and entered another car driven by Eduardo Barrios. Barrios made a phone call to "a source," specifically, defendant, to arrange for four more pounds of methamphetamine.

Barrios and Castaneda then drove to a gas station where they met defendant, who was driving a white pickup truck. Barrios grabbed a bag from the passenger side of defendant's white pickup truck and put it inside of the trunk of his car. Defendant then followed Barrios and Castaneda back to the parking lot, and Barrios instructed defendant to park about 30 to 40 feet behind them.

[2] The factual background of the underlying offense is taken from the police reports.

Thereafter, Barrios retrieved the bag from his trunk, and he and Castaneda entered the confidential informant's car with the bag. The informant exited the car, "gave the bust signal," and officers arrived to arrest defendant and his codefendants.

The bag contained multiple packages of methamphetamine, weighing approximately four pounds in total. In addition, officers found four packages of methamphetamine in the console between the driver's seat and front passenger seat of the white pickup truck driven by defendant.

On February 20, 2014, a felony complaint was filed charging defendant with possession for sale of a controlled substance, to wit, methamphetamine (Health & Saf. Code, § 11378; count 1) and transportation of a controlled substance, to wit, methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 2). As to both counts, the complaint also alleged that defendant had possessed more than one kilogram of methamphetamine (Health & Saf. Code, § 11370.4, subd. (b)(1)).

On April 28, 2014, defendant signed a plea form pursuant to section 859a. The plea form described the terms of the plea, certain constitutional rights and an acknowledgement of his waiver of such rights, and the consequences of his plea. Next to each paragraph was a box, which defendant initialed. Defendant initialed the box stating that he had sufficient time to consult with his attorney concerning his intent to plead guilty to the possession of methamphetamine for sale charge against him, that his lawyer had "explained everything on this Declaration to [him]," and that he had "sufficient time to consider the meaning of each statement." This box also stated that defendant had

placed his initials "in certain boxes on this Declaration to signify that [he] fully underst[oo]d and adopt[ed] as [his] own each of the statements which correspond to those boxes." Among the specified consequences of the plea defendant initialed is the following: "I understand that if I am not a citizen of the United States, deportation, exclusion from admission to the United States, or denial of naturalization *will* result from a conviction of the offense(s) to which I plead guilty/no contest." Defendant initialed each relevant box and signed the form. He also initialed the box stating he could "read and understand English." In addition, there was a check mark next to each box defendant had initialed. Defendant's attorney also signed the plea form below a statement that he had "personally read and explained the contents of the above Declaration to the Defendant," and that he had "personally observed the Defendant sign said Declaration . . . ."

An interpreter was not present during execution of the plea form, but one was present during the plea hearing held the same day that defendant signed the plea form. At that plea hearing, defendant and one of his codefendants plead guilty to possession of methamphetamine for sale, and the following colloquy occurred:

"[PROSECUTOR]: Your Honor, for [defendant], did we need to use an interpreter to go over [the plea form]?

"[DEFENSE COUNSEL]: No, he understood English well enough, or he understood the plea form. He asked respective questions that allowed me to believe that

he knows what was said. He just asked that for purposes of sentencing, that he be allowed to also have the interpreter.

"THE COURT: [Defendant], you feel comfortable going through the plea in English?

"THE DEFENDANT: Yes, yes."

Thereafter, the trial court asked defendant whether he had initialed and signed the plea form. Defendant responded "Yes" to both questions. The court also asked defendant whether he went over the entire plea form with his attorney before he initialed it and signed it. Defendant replied "Yes." In addition, the court asked defendant whether he had any questions "about anything on the [plea] form," whether he understood everything on the plea form, and whether he had sufficient time to discuss his case with his attorney. Defendant confirmed that he had enough time to discuss his case with his attorney, that he understood everything on the plea form, and that he had no questions. Defense counsel verified that he had gone over the entire form with defendant and that defendant understood everything on the plea form. Defendant also indicated that he understood his constitutional rights and "all of the possible penalties and punishments for the offenses."

The trial court found that defendant had read and understood the plea form. Specifically, the court stated: "I'll find each of the defendants has read and understood the declaration and plea form. They understand the nature of the charges they're pleading to, all the consequences and punishments for the offenses they're pleading to,

and each of their constitutional rights. I'll find that they freely, voluntarily, knowingly, and intelligently waive each of those rights. At this time, I'll allow each of them to withdraw their previously entered pleas of not guilty." Subsequently, defendant plead guilty to possession of methamphetamine for sale, and was immediately sentenced in accordance with his plea agreement to two years in county jail with 140 days of credit for time served.

Following defendant's release from custody, on October 2, 2014, federal immigration officials detained defendant and initiated removal proceedings against him due to his conviction.

On February 21, 2017, defendant filed a motion to vacate his conviction under section 1016.5 with supporting exhibits. In relevant part, defendant argued the trial court violated section 1016.5 by failing to expressly advise him of his immigration consequences on the record that his plea may have the consequences of deportation, exclusion from admission, or denial of naturalization. He also claimed he received ineffective assistance of counsel and that he suffered prejudice as a result. Defendant declared in his declaration in support of his motion that he was not telling the truth when he informed the judge who took his plea that he had gone over the entire plea form with his attorney and that he understood everything on it. He also claimed that his attorney never went over the form with him and never explained to him that his plea could have adverse immigration consequences.

According to defendant's motion and his declaration, as of March 2017, he was a 32-year-old lawful permanent resident who had been raised and educated in the United States since the age of 15. Defendant stated that he had four children who were citizens of the United States. Defendant declared, "My niece . . . has known me over all her life. She says I have worked hard in this country, *learned the language*, and established a life and provide for my children." Declarations by various character references were attached to defendant's declaration as exhibits, including one from defendant's niece.

On June 2, 2017, the trial court held a hearing on defendant's section 1016.5 motion to vacate the judgment. In an effort to prevent defendant's prior trial attorney who had represented him at the time of his plea from testifying for the People, defendant's new attorney stated that defendant was not raising a claim of ineffective assistance of counsel and that he may raise such a claim under section 1473.7 in the future. However, because defendant's motion was "replete" with assertions that his prior attorney, Nolan King, did not appropriately advise him, and because defendant testified to the same, the court deemed the attorney-client privilege waived and allowed defendant's former trial attorney to testify.

Defendant testified that Attorney King had not gone over the plea form with him, as well as the immigration consequences found in paragraph 14 of the plea form. Defendant also claimed that he did not understand English and that Attorney King did not use a Spanish interpreter when he placed his initials and signature on the plea form. He

further asserted that no one had read the plea form to him and that he had signed and placed his initials on the plea form because Attorney King had told him to.

Attorney King, who had represented criminal defendants for 37 years, testified that he had conversed with defendant in English "several times" prior to the date he entered his plea. He spoke with defendant about the plea form in English, and defendant responded in English. He "specifically" read the advisement on immigration consequences and explained what it meant to defendant. He advised defendant that he "would be deported" if he pleaded guilty. Defendant had no questions concerning the immigration consequences. After a "full explanation" of the consequences of pleading guilty, Attorney King "always give[s] the client . . . the choice or opportunity to either accept [the plea] or not accept it." Attorney King also explained that defendant was facing a "much stiffer sentence" if he had opted to go to trial, noting defendant's exposure outweighed "what he would get if he took the plea deal." Attorney King was satisfied that defendant spoke and understood English and that defendant understood the immigration consequences as a result of taking the plea.

The trial court took judicial notice of the file and noted that there were several appearances with a Spanish interpreter and a few hearings without a Spanish interpreter. The record also indicates that defendant had attended some of those hearings with his codefendants, and that his codefendants' presumably had to use a Spanish interpreter.

Following argument, the trial court denied defendant's motion to vacate. The court found that although defendant had shown the offense to which he had pleaded

guilty may have the consequence of deportation, defendant failed to establish he was not properly advised or that he did not understand English. The court explained that it had "some credibility issues with [defendant's] testimony" based on the conflict between his claim of not being able to read or understand English and the fact that he apparently did not request an interpreter when federal immigration officials issued him a notice of deportation in October 2014, as well as the fact that he told the judge who took his plea that he had gone over the plea form with his attorney and understood everything on it. The court had also observed defendant point to a particular paragraph on the plea form when defense counsel asked him about it, but before the interpreter had a chance to translate what defense counsel had asked. The court also found that Attorney King, on the other hand, testified truthfully. The court stated that it was satisfied defendant understood English well enough to have knowingly and intelligently gone over the plea form with his attorney. The court asserted that defendant did not have any questions and that defendant understood everything on the plea form, including the immigration consequences. The court therefore concluded defendant failed to show he was not properly advised of his immigration consequences.

The trial court noted that even if the court was incorrect in finding defendant was properly advised, the court found defendant had not established prejudice. The court explained that the amount of prison time defendant was facing had he elected to go to trial was not "incongruous with what the defendant's declaration indicates he was told." The court concluded that defendant's assertion that if he had been properly advised, he

would have requested a continuance, tried to get a better deal with no deportation, or gone to trial despite the prospect of more prison time was not enough to carry his burden. Specifically, the court stated, "I do not find that the defense has shown there is a reasonable probability that a result more favorable to [defendant] would have been reached had he been properly advised if I am incorrect and he was not properly advised."

On July 24, 2017, defendant filed a timely amended notice of appeal from the trial court's denial of his motion to vacate pursuant to section 1016.5.

III

DISCUSSION

Defendant contends the trial court abused its discretion in denying his section 1016.5 motion to vacate because his limited English proficiency prevented him from understanding the immigration consequences of his plea and a Spanish interpreter was not provided at the time he executed his plea form. He also asserts that the trial court abused its discretion by applying the wrong test for prejudice and that his counsel was ineffective for failing to provide a Spanish interpreter during his execution of the plea form.

A. *Denial of Section 1016.5 Motion to Vacate Plea*

Defendant urges this court to reverse the order denying his motion to vacate because the court erred in determining he was adequately advised of the immigration consequences of his guilty plea. As explained below, we conclude that the trial court did not abuse its discretion in denying the motion to vacate.

1. *Legal Principles and the Standard of Review*

Section 1016.5 requires the trial court to administer the following advisement before accepting a plea of guilty or nolo contendere: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (§ 1016.5, subd. (a).)

Section 1016.5 further provides that if "the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty." (§ 1016.5, subd. (b).)

To prevail on a motion to vacate under section 1016.5, a defendant "must demonstrate that (1) the court taking the plea failed to advise the defendant of the immigration consequences as provided by section 1016.5, (2) as a consequence of conviction, the defendant actually faces one or more of the statutorily specified immigration consequences, and (3) the defendant was prejudiced by the court's failure to provide complete advisements." (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1287 (*Chien*); accord, *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 192; *People v. Arendtsz* (2016) 247 Cal.App.4th 613, 616-617 (*Arendtsz*).) "On the question of

prejudice, defendant must show that it is reasonably probable he would not have pleaded guilty or nolo contendere if properly advised." (*People v. Totari* (2002) 28 Cal.4th 876, 884.)

The advisement required by section 1016.5 need not be given orally. (*People v. Quesada* (1991) 230 Cal.App.3d 525, 536 (*Quesada*), superseded by statute on other grounds as stated in *People v. Totari* (2003) 111 Cal.App.4th 1202, 1206-1207, fn. 5.) "It is sufficient if . . . the advice is recited in a plea form and the defendant and his counsel are questioned concerning that form to ensure that defendant actually reads and understands it." (*Quesada*, at p. 536.) "Only if in questioning the defendant and his attorney the trial court has reason to believe the defendant does not fully comprehend his rights, must the trial court conduct further canvassing of the defendant to ensure a knowing and intelligent waiver of rights." (*People v. Castrillon* (1991) 227 Cal.App.3d 718, 722.)

"[S]ection 1016.5 allows a court to vacate a conviction only if the *trial court* has failed to advise the defendant of potential adverse immigration consequences at the time of the plea. The statutory motion cannot be used to assert *defense counsel*'*s* failure to provide adequate representation relating to immigration consequences." (*Chien*, *supra*, 159 Cal.App.4th at p. 1285.)

"We review a motion to vacate under section 1016.5 for abuse of discretion." (*People v. Gutierrez* (2003) 106 Cal.App.4th 169, 172; accord, *People v. Limon* (2009) 179 Cal.App.4th 1514, 1517-1518; *Chien*, *supra*, 159 Cal.App.4th at p. 1287.) Further,

in properly applying the standard of review, an appellate court must uphold the trial court's reasonable inferences and resolution of factual conflicts if supported by substantial evidence, viewed in the light most favorable to the ruling, and must also accept the court's credibility determinations. (*Quesada*, *supra*, 230 Cal.App.3d at p. 533.) The trial court's inferences and conclusions here are supported by substantial evidence.

2. *Analysis*

Here, the trial court did not abuse its discretion in concluding that defendant failed to establish the first element for his motion to vacate. Although an oral advisement of immigration consequences would have been a preferable practice, the record here shows that the written plea form and accompanying questioning regarding the plea form constituted an adequate advisement of immigration consequences.

Prior to entering his guilty plea, defendant was advised of the immigration consequences as required by section 1016.5. The plea form included the specific language required by section 1016.5, subdivision (a). The plea form advised defendant that if he was "not a citizen of the United States, deportation, exclusion from admission to the United States, or denial of naturalization *will* result from a conviction of the offense(s) to which [he] plead guilty/no contest." Defendant was advised in the written plea agreement, not that his plea *may* have immigration consequences, but that it *will* result in deportation, exclusion from admission to the United States, and denial of naturalization if he was not a United States citizen. (See *Arendtsz*, *supra*, 247

Cal.App.4th at p. 617.) Defendant put his initials next to immigration consequence provision on the plea form. He also initialed the provision which stated: "I have had sufficient time to consult with my attorney concerning my intent to plead guilty/no contest to the above charge(s) . . . . My lawyer has explained everything on this Declaration to me, and I have had sufficient time to consider the meaning of each statement. I have personally placed my initials in certain boxes on this Declaration to signify that I fully understand and adopt as my own each of the statements which correspond to those boxes." He additionally initialed the statement which stated, "I can read and understand English."

Before accepting the plea, the trial court questioned defendant to ensure that he had read all three pages of his plea form, understood the contents of the plea form, understood the rights he was giving up, and had sufficient time to discuss his case with his attorney. The court also asked if he had initialed the boxes and signed the plea form. Defendant replied in the affirmative and confirmed that he had reviewed and understood the plea form and had no questions regarding the contents of the plea form. Defendant also affirmed that he understood the rights he was giving up and that he had sufficient time to discuss his case with his attorney. His attorney agreed, and the court found that defendant read and understood the plea form, the charges against him, and the consequences of his plea. The court further found that defendant was knowingly, intelligently, and voluntarily waiving his constitutional rights. The record thus

demonstrates that defendant read and understood the contents of the plea form, including the advisement regarding immigration consequences.

Defendant contends that the trial court abused its discretion in finding he was properly advised of his immigration consequences because Attorney King failed to provide him with a Spanish language interpreter at the time he executed his plea form. This argument is unpersuasive. The record shows that at the outset of the April 28, 2014 taking of the plea hearing, the prosecutor asked the court if defendant required a Spanish interpreter to go over his plea form. To which, defense counsel informed the court that defendant understood English and the plea form "well enough." Defense counsel explained, "[Defendant] asked respective questions that allowed [him] to believe that he knows what was said." The trial court, thereafter, asked defendant personally whether defendant felt "comfortable going through the plea in English?" Defendant responded, "Yes, yes." Thereafter, as noted above, defendant confirmed that he had gone over the entire plea form with his attorney before initialing it and signing it, he understood everything on the plea form, and he had no questions.

Furthermore, at the motion to vacate hearing, Attorney King testified that he spoke with defendant in English "several times" leading up to the plea hearing and that he was satisfied that defendant spoke and understood English well enough to understand the terms of the plea form. Attorney King also stated that he had specifically read the immigration consequences advisement to defendant, explaining to him what it meant, and that defendant had no questions about it. Given the inconsistency between defendant's

testimony that he did not read and understand English and what defendant had stated at the plea hearing and his actions at the motion to vacate hearing, among other indications that defendant understood and spoke English, the trial court properly discredited defendant's testimony and found Attorney King's testimony credible. Moreover, the essence of defendant's argument is that his own attorney failed to provide adequate representation in regard to immigration consequences. Defendant's argument fails because, as explained in further detail, *ante*, a section 1016.5 motion to vacate "cannot be used to assert defense counsel's failure to provide adequate representation relating to immigration consequences." (*Chien*, *supra*, 159 Cal.App.4th at p. 1285, italics omitted.)

Accordingly, on this record, we find no abuse of discretion in the determination that defendant was adequately advised of the immigration consequences of his plea. (See generally *Quesada*, *supra*, 230 Cal.App.3d at p. 536 [the trial court sufficiently advises a defendant of immigration consequences if the section 1016.5 advisement is included in the plea form and the trial court engages in questioning to ensure that the defendant read and understood the plea form].)[3]

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[3] Because we find the trial court did not abuse its discretion in finding defendant was adequately advised of the immigration consequences of his plea, we need not address defendant's contention that the trial court erred per se by applying the wrong test for prejudice on a section 1016.5 motion. However, we remind the trial court that "prejudice is shown if the defendant establishes it was reasonably probable he or she would not have pleaded guilty if properly advised. [Citation.] [¶] . . . [T]he question is what the defendant would have done . . . ." (*People v. Martinez* (2013) 57 Cal.4th 555, 558-559.) Relief is also available if the defendant establishes he or she would have rejected the existing bargain to attempt to negotiate a bargain that would not result in deportation. (*Id.* at p. 559.)

B. *Ineffective Assistance of Counsel*

Defendant also contends he received ineffective assistance when counsel failed to provide a Spanish language translator at the time he executed his plea form. The People respond a claim of ineffective assistance of counsel is not cognizable in a motion to vacate the judgment pursuant to section 1016.5. In the alternative, the People assert "the attorney who represented [defendant] when he entered his plea did not render constitutionally deficient performance."

As previously noted, a section 1016.5 motion cannot be used to assert defense counsel's failure to provide adequate representation relating to immigration consequences. (*Chien*, *supra*, 159 Cal.App.4th at p. 1285.) *Chien* rejected the defendant's contention that the statutory remedy established by section 1016.5 extended to counsel's purported failure to provide competent representation relating to the potential immigration consequences of conviction, a matter not addressed in the statute. (*Chien*, at pp. 1287-1288.) Although section 1016.5 was enacted to promote fairness to noncitizen defendants, "[t]he broad statement of intent in section 1016.5, subdivision (d), and its concern with fairness to the accused, does not override the sections narrow requirements and precise remedy. Section 1016.5 addresses only the trial court's duty to advise, not counsel's, and provides a specific remedy for that particular failure." (*Chien*, at p. 1288.) The *Chien* court found "no basis to conclude that the statute grants the trial court broad authority to vacate a conviction based on any error or deficiency of counsel related to advisement of adverse immigration consequences," and concluded the court

lacked jurisdiction to address a claim of ineffective assistance of counsel in the context of a section 1016.5 motion. (*Chien*, at p. 1290.)

The holding of *Chien* was endorsed by the Supreme Court in *People v. Kim* (2009) 45 Cal.4th 1078. Therein, defendant asserted that his trial attorney was incompetent for failing to investigate the immigration consequences of his plea and for failing to negotiate a plea to a crime that had no such immigration consequences. (*Id*. at p. 1102.) The California Supreme Court concluded, "[w]e . . . reject defendant's contention that in light of the Legislature's enactment of section 1016.5, which necessarily reflects that body's assessment of the need for a remedy when pleading defendants are unaware of the immigration consequences of their pleas, we should expand the scope of that statutory motion to vacate to provide some form of relief for defendant here. We note the trial court properly admonished defendant regarding the possible immigration consequences of his plea, and his further claim that his trial attorney was somehow ineffective is not a wrong encompassed by the statute. [Citation.]" (*Kim*, at p. 1107, fn. 20.)

Accordingly, under the above-discussed authorities, we reject defendant's ineffective assistance of counsel claim relating to his statutory section 1016.5 motion to vacate the judgment.

However, defendant is correct that under *Padilla v. Kentucky* (2010) 559 U.S. 356, 364 (*Padilla*), a defendant may raise an ineffective counsel claim relating to counsel's failure to properly advise a client of immigration consequences. In *Padilla*, the United States Supreme Court held that an attorney's misadvice or failure to advise about the

potential immigration consequences of a plea may constitute ineffective assistance. There, the defendant, a Honduran citizen, pleaded guilty to transporting a large quantity of marijuana, after his attorney erroneously advised that he need not worry about the immigration consequences of his plea. (*Id*. at p. 359.) When Padilla sought postconviction relief, the Kentucky Supreme Court held the Sixth Amendment's guarantee of effective assistance of counsel did not protect a criminal defendant from erroneous advice about the collateral consequences of a conviction. (*Padilla*, at pp. 359-360.) The *Padilla* court disagreed, holding that constitutionally competent counsel must inform his or her client whether a plea carries a risk of deportation. (*Id*. at pp. 360, 374.) *Padilla*'s holding was not limited to affirmative misadvice; instead, the high court reasoned that an attorney has an affirmative duty to advise a client when the client faces a risk of deportation. (*Id*. at pp. 370-371, 374.)

This case is readily distinguishable from *Padilla*. Here, there was no evidence of misadvice about defendant's immigration consequences. In fact, as previously explained, Attorney King specifically testified that he had advised defendant of the immigration consequences before defendant pleaded guilty and that defendant indicated that he understood the immigration consequences before entering his plea. Attorney King explained, "I told [defendant] with a felony such as he had the opportunity to plead to, that as a result of that plea, that he would be deported." Attorney King also stated that defendant spoke to him in English and that he was satisfied defendant read and understood English sufficiently to understand the terms of the plea agreement. Defendant

had no questions concerning the immigration consequences. The trial court found Attorney King's testimony credible. In addition, prior to taking the plea, when the court asked defendant whether he felt "comfortable going through the plea in English," defendant responded in the affirmative. Defendant also confirmed that his attorney had gone over the entire plea form with him and that he understood everything on the form. The record establishes that defendant was aware of the consequences of his plea and that he understood English sufficiently enough to not warrant a Spanish language interpreter at the time he executed his plea form. There is nothing in the record to indicate that his attorney erroneously advised defendant that he did not need to worry about the immigration consequences of his plea, as defense counsel did in *Padilla*. (*Padilla*, *supra*, 559 U.S. at p. 359.)

In sum, the record demonstrates that counsel was not ineffective when counsel failed to provide a Spanish language interpreter at the time defendant executed his plea form. The record also shows that the trial court adequately advised defendant of the immigration consequences before he entered his guilty plea. We therefore find no abuse of discretion in the denial of defendant's motion to vacate and affirm the judgment.

IV

DISPOSITION

The order denying defendant's section 1016.5 motion to vacate his 2014 guilty plea is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.